

# OFFICE OF THE ATTORNEY GENERAL 91-00204



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MAR 21 1991

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Honorable Rex Fronduti  
Mayor, City of Millbrook  
P. O. Box C  
3841 Grandview Road  
Millbrook, AL 36054

Municipalities - Animals -  
Municipal Employees - Liability

1. The Town of Millbrook may, by ordinance, provide for the destruction of dogs running at large where such destruction is necessary to protect the health and safety of its citizens.
2. Any liability of a city employee for destroying a dog is a factual determination which must be made on a case-by-case basis.

Dear Mayor Fronduti:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION 1

May the City of Millbrook summarily destroy dogs running at large within the city's

corporate limits, given that the city has a leash law ordinance to prevent dogs from running at large?

#### FACTS AND ANALYSIS

Code of Alabama 1975, § 11-47-110 provides:

"All cities and towns of this state shall have the power to regulate and prevent the running at large on the streets of all horses, mules, cows, hogs, dogs or other animals and to pass all laws necessary for the impounding and sale of such animals and destruction of dogs and to regulate and prohibit the driving of livestock in droves through the streets of a city or town."

Thus, according to this provision, a municipality in this state may by ordinance provide for the destruction of dogs.

The Supreme Court of Alabama in Robertson v. City of Tuscaloosa, 413 So.2d 1064 (Ala. 1982) stated that when the health and safety of the community are endangered by animals, those animals may be destroyed.

Furthermore, courts in other states have ruled that the destruction, by public officials, of domestic animals which were running at large was proper, such destruction being provided for by statute. See annotation at 42 ALR 4th 839. The destruction of dogs in proper cases to protect life, health and property is an exercise of the police power belonging to a municipality. McQuillin Municipal Corporations, § 24.287, 24.289 (3rd ed.).

#### CONCLUSION

The Town of Millbrook may, by ordinance, provide for the destruction of dogs running at large where such destruction is necessary to protect the health and safety of its citizens.

QUESTION 2

If answered in the affirmative, is an employee of the city immune from civil and criminal liability for the killing of a dog if that employee is directed by the city to summarily destroy dogs roaming at large within the corporate limits?

FACTS AND ANALYSIS

Whether the circumstances in a particular case justify the destruction of an animal is a question of fact. Robertson v. City of Tuscaloosa, supra. Therefore, any liability of a city employee for destroying a dog is a factual determination which must be made on a case-by-case basis. The Attorney General cannot make such determination.


CONCLUSION

Any liability of a city employee for destroying a dog is a factual determination which must be made on a case-by-case basis.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

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